IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

CHAMBER SUMMONS NO. 20 OF 2006

IN

SUIT NO.1603 OF 1985

SHRI RAJESH KANTILAL SHAH
AND ANR. ....Plffs.
V.S.
KISHORE K. BADIANI AND ORS. ...Defends.
AND
PRADEEP K. SHETTY
(AGENT OF THE COURT RECEIVER) ....Applicant
AND
PRASHANT SHARMA ....Respondent

CHAMBER SUMMONS NO. 1303 OF 2005
IN
CHAMBER SUMMONS NO. 20 OF 2006
IN
SUIT NO. 1603 OF 1985

SHRI RAJESH KANTILAL SHAH
AND ANR. ....Plffs.
V.S.
KISHORE K. BADIANI AND ORS. ...Defends.
AND
PRADEEP K. SHETTY
(AGENT OF THE COURT RECEIVER) ....Applicant
AND
PRASHANT SHARMA ....Respondent

Mr. R.D. Soni i/by Jayesh Desai and Associates
for the plaintiffs.
Mr. C. Ardeshir i/by. Y.R. Thakore
for the applicant.
Mr. S.S. Shamim i/by. Shamim and Co.
for defendant no. 2B and 2D.
Mr. R.V. Sameul for third party.
Alpana Ghone i.by. Sonal Doshi and Co.
for defendant no.1.
D.R. Dhurat, 1st Asstt to Court Receiver present.
S.G. Nadkarni, Architect present.

CORAM: S.U. KAMDAR, J.

DATE : 22ND FEBRUARY, 2006.

P.C. :

1. By consent of the parties the following order is passed :

2. In so far as Chamber Summons No. 20 of 2006

is concerned learned counsel appearing for the applicant does not press the said Chamber Summons. In view thereof the same is dismissed as infructious.

3. In so far as Chamber Summons no. 1303 of 2003 is concerned learned counsel appearing for Prashant Sharma states after instructions from his client who is present in court that he undertakes to this court to complete the construction of the collapsed wall within a period of three months from today. The construction will be carried out by him within a period of three months from today. The construction will be carried out by him in accordance with the design and to the satisfaction of the court appointed architect M/s. Nadkarni and Co. who is already appointed as architect at the earlier stage in the present proceedings. Only on completion of the entire construction to the satisfaction of the architect the applicant Prashant Sharma will be entitled to receive a sum of Rs.5 lacs from the account of

the Court Receiver and the Court Receiver will disburse the same only after the architect grants him a certificate that the construction is carried out to the satisfaction of the said architect. Prashatn Sharma will bear balance of the cost of the construction of the said wall. The present order is passed in pursuance of the order dated 18.10.2005 under which the court had directed the Court receiver to complete the construction of the wall. Court Receiver is further directed to issue necessary notice to Pradeep Sharma for commencing the construction of the work after the receipt of the necessary design and plans from the Architect M/s. Nadkarni and Co.

4. The architect who is present in court states that he will prepare the design and give it to the Court Receiver within two weeks from today. The Court Receiver will take necessary steps within a period of one week thereafter. The said construction of wall shall be completed on or before 15.6.2006.

5. Learned counsel appearing for the applicant who is the agent of the court receiver does not press the prayer clauses (a) and (c) thereof. However it is made clear that by virtue of the collapse of the wall he was not able to carry on his business of Hotel cum Restaurant because the same is adjacent to the Sanjay Gandhi National Park. I am of the view that looking at the facts and circumstances of the case though it is not possible to grant any moratium or reduction of royalty amount but a Receiver can be directed to grant extended period of six months. However the same will be on following conditions :

6. Firstly the applicant will make payment of arrears of royalty amount within a period of one month from today.

7. Secondly for the remaining period and for the extended period of six months the applicant will make payment of royalty charges as and when the same becomes due and payable and shall comply

with all the terms and conditions of the agency agreement executed between the applicant and the Court Receiver. Chamber summons disposed off accordingly. No order as to costs.

sd/-

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